

necessary to reflect such costs in prices in order to avoid an inefficient misallocation of resources to this service.<sup>34</sup>

Sprint, MFS and ALTS, in effect, are arguing for economically inefficient prices that would artificially stimulate demand and misallocate resources. That has never been this Commission's objective. The Commission has repeatedly observed that economic efficiency is a fundamental goal of its governing statute.<sup>35</sup> Pacific Bell's use of LRIC as a basis for its floor space charges is entirely consistent with that goal. The opponents of LRIC seek prices for floor space that are inconsistent with the statutory goal of efficiency.

The opponents of LRIC also pointedly neglect to mention that they will pay only part of Pacific Bell's LRIC of new construction because they will acquire space in 100 square foot increments. Unlike Pacific Bell, they do not face the long run incremental cost of constructing much larger central

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<sup>34</sup> Although Sprint claims that "reduction in the size of switches" means that "new buildings are not required" (App. A, at 12), that contention is relevant only to short run costs. In the long run, notwithstanding reductions in switch sizes, growth in demand for telecommunications service, including EIS service, as well as geographic shifts of population and business in California that EIS customers will want to follow, will cause new central office building costs. Current construction costs are a reasonable proxy for that LRIC and Sprint has demonstrated nothing to the contrary. See Pacific Bell's Direct Case at 40.

<sup>35</sup> See, e.g., MTS and WATS Market Structure, Memorandum and Order, 97 F.C.C. 2d 682, 686 (1983). See, also, 47 U.S.C. § 151.

office space increments.<sup>36</sup> That is a distinct cost advantage for interconnectors in conducting their business. Pacific Bell does not seek to take that advantage away. Rather, it proposes to offer space in 100 square foot amounts, priced at the LRIC of providing such space.

In short, the substantive justification presented by Pacific Bell for its reliance on LRIC, and its use of current construction cost as a proper proxy for its long run incremental costs, stands unrefuted on the record of this proceeding. Since Pacific Bell's approach is entirely consistent with the rate setting principles long endorsed by the Commission, and the statutory objective of efficiency, the opposition to Pacific Bell's approach should be rejected.

In addition to this general challenge to Pacific Bell's use of LRIC, the opposition comments raise a variety of more discrete objections to Pacific Bell's charges for floor space. We rebut each of these objections below.

TCG asserts that exchange carriers "failed to provide both the market and book floor space information required by the Commission"<sup>37</sup> and criticizes carriers for including previously filed information regarding their costing methodology. TCG further claims that the most expensive office space in the nation (in downtown Manhattan) "is priced at about \$3.00 per month per square foot" and urges the

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<sup>36</sup> When Pacific Bell runs out of central office space, it obviously must add space in larger increments than 100 square feet.

<sup>37</sup> TCG at A-5.

Commission to reject any floor space rate that exceeds that level.<sup>38</sup>

TCG's objections are misleading and demonstrably incorrect. Pacific Bell did in fact provide in Appendix R both market (as defined by the Commission in Paragraph III, A(f)(1) of the Designation Order) and book floor space costs in the form of investment and monthly recurring cost per square foot. And, it is hardly surprising that Pacific Bell's Direct Case included a substantial amount of information that Pacific Bell had previously furnished as part of the documentation that accompanied Transmittal No. 1613, its initial EIS filing. The Designation Order (Para. III, A(b)) required Pacific Bell to document and justify its costs underlying its EIS rates, including the methodology utilized to calculate those costs. Much of the cost data submitted with Transmittal No. 1613 was directly responsive to this request. Contrary to the misimpression that TCG seeks to create, Pacific Bell has fully complied with the Designation Order<sup>39</sup> by providing book cost, "market" (or current) cost, and its justification for selecting current cost as a proxy for LRIC.

TCG's reference to the alleged cost of the "most expensive office space in the nation" is completely unsupported and, in any event, irrelevant. Even assuming that \$3.00 per square foot is an accurate figure for some part of

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<sup>38</sup> TCG at A-5.

<sup>39</sup> Designation Order at III(A)(f)(1).

New York (though it is certainly not reflective of every part of downtown Manhattan), it does not equate to Pacific Bell's long run cost of satisfying demand for central office floor space. Pacific Bell has demonstrated that a rate of \$3.00 per month per square foot for central office floor space is well below its own long run incremental cost. That is the only relevant evidence before the Commission and TCG has not even attempted to address that evidence directly.

Sprint contends that the FCC should require all exchange carriers to use embedded costs to develop their EIS rates on the grounds that that methodology "is the only reasonable" one and "is consistent with the development of rates under price caps."<sup>40</sup> In fact, rates under price caps move over time in accordance with external price indices and embedded costs are irrelevant. Moreover, contrary to Sprint's assertion, new services introduced under price cap regulation may be based on incremental costs.<sup>41</sup> Thus, Sprint's reference

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<sup>40</sup> Sprint, App. A, at 10.

<sup>41</sup> Sprint argues that "in the Part 69/ONA Order, 6 FCC Rcd. 4524, the Commission concluded that its new services test should be cost-based" and that "it therefore required LECs introducing new services to submit studies identifying their direct costs." (Sprint, App. A, at 10). Contrary to Sprint's implication, direct cost is not a synonym for embedded cost. In fact, in the Part 69/ONA Order, the Commission, when deciding whether to require LECs to submit rates based on fully distributed cost (i.e., embedded cost) or to use a more flexible approach, ruled in favor of "a flexible cost-based approach." (Part 69/ONA Order, 6 FCC Rcd at 4531.) Indeed, the Commission's intent is to "provide the flexibility needed to achieve efficient pricing." (Id.) This is a clear indication of the Commission's approval of the use of LRIC, since "efficient pricing" requires the use of LRIC.

to price cap regulation is inapposite. Moreover, embedded costs, contrary to Sprint's allegation, are not the "only reasonable" cost methodology. In fact, in light of the Commission's statutory goal of efficiency, such costs are an unreasonable basis for the floor space element of EIS rates. Economically efficient prices reflect LRIC, not embedded costs.

MFS groundlessly objects to Pacific Bell's inclusion of the cost of land in its floor space rates,<sup>42</sup> and claims that the Commission should prescribe the use of BOMA to obtain base floor space rental rates.<sup>43</sup> MFS provides no basis for its contention that the cost of land should be excluded from floor space rates because no such basis exists. Land clearly is part of the LRIC of satisfying demand for central office floor space, as Pacific Bell has already explained. No party, other than MFS, even attempted to claim the contrary. Moreover, contrary to the additional claim by MFS, the use of so-called "market rental" rates (such as BOMA would produce)<sup>44</sup> to establish the charges for the Floor Space element would produce economically inefficient rates. Current market rental rates for all types of buildings reflect the current value

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<sup>42</sup> MFS at 8.

<sup>43</sup> MFS at 13.

<sup>44</sup> The very fact that the Commission has required the LECs to offer physical collocation at regulated cost-based rates makes the establishment of a true market rental rate impossible. LECs cannot refuse to offer space. Unregulated landlords can, however, and do, if they do not get the price they desire or need to recover incremental cost.

placed on such space. Such rates, however, do not reflect the LRIC of satisfying demand for Pacific Bell's central office floor space, which cost Pacific Bell documented in detail in its Direct Case.

ALTS generally (and erroneously) asserts that LECs have proposed floor space charges that "are much higher than the costs that they attribute to themselves."<sup>45</sup> In fact, Pacific Bell charges its subsidiaries, Pacific Bell Information Services ("PBIS"), rates for central office floor space that are based on current construction costs, and that include current land acquisition costs, as a reasonable proxy for LRIC. The methodology used to identify land and building costs to charge PBIS is exactly the same as that which Pacific Bell used to develop its interstate EIS rates.<sup>46</sup>

MCI argues that in order to avoid placing EIS at a disadvantage to other LEC services, "net book value" should be used to determine floor space rates since this is the "identical method used to allocate and cost land and building investment for the existing DS1 and DS3 channel termination rates."<sup>47</sup>

The "net book value," or embedded, land and building identified in DS3 channel termination costs would be an issue

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<sup>45</sup> ALTS at 22.

<sup>46</sup> Because transfer pricing to affiliates falls under state jurisdiction, the cost of money factor used to develop these rates is prescribed by the California Public Utilities Commission.

<sup>47</sup> MCI at 9.

if DS3 channel terminations were priced at cost (direct cost plus overheads), as is EIS floor space. In fact, DS3 channel termination rates are 23% above direct cost plus overhead and would, if held fixed, remain above this cost if it were adjusted to reflect current land and building. In other words, Pacific Bell's channel termination rates are priced well above LRIC. Also, as noted, the use of current land and building costs is consistent with the manner in which Pacific Bell determines prices to charge its subsidiary. For these reasons, MCI and other potential collocators suffer no disadvantage.

Both MFS and Sprint criticize Pacific Bell for including a 30 square foot cage access area in its floor space costs.<sup>48</sup> MFS argues that "no other LEC has proposed such a costing scheme, and Pacific Bell has not demonstrated that its central offices differ significantly from those of other LECs."<sup>49</sup> This claim is both incorrect and irrelevant. In fact, US West made a similar allowance for space in the central office that is assigned to a customer in addition to the 100 square foot enclosed cage area.<sup>50</sup> Moreover, even if no other LEC had made such a proposal, that fact, by itself, would not establish that Pacific Bell's proposal is unreasonable, whether or not Pacific Bell's central offices differ, significantly or insignificantly, from those of other

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<sup>48</sup> MFS at 12-13; Sprint App. A at 13.

<sup>49</sup> MFS at 12.

<sup>50</sup> US West Direct Case, at 22.

LECs. The only issue is whether Pacific Bell must forego use of more than just the 100 square foot cage area assigned to each collocator. Pacific Bell has shown that the 30 square foot area represents the minimum amount of space, in addition to the 100 square foot area, that Pacific Bell must assign, on average, to each EIS customer in order to provide the requested service. That is a cost caused by demand for EIS service and should accordingly be included as part of the LRIC on which economically efficient floor space charges are based.

MFS also alleges that Pacific Bell did not substantiate its "assertion" that "none of the access space in its collocation arrangements will be used as common space."<sup>51</sup> It further attributes to Pacific Bell an "assertion" that the "30-square foot 'front yard' . . . is dedicated to the exclusive use" of each collocator.<sup>52</sup> These are, in fact, blatant misrepresentations of Pacific Bell's Direct Case. Pacific Bell made no such exclusivity "assertion," and, not surprisingly, MFS provides no citations to Pacific Bell's Direct Case to support its claim. As Pacific Bell explained in its Direct Case (at 9-11), "[t]he 3 by 10 foot area is assignable square footage . . . and is not part of common access (unassignable) building space." Stated differently, the 30 square foot area is not part of the common building access areas such as elevators, stairwells or unassignable hallways or corridors. Pacific Bell personnel may traverse

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<sup>51</sup> MFS at 12.

<sup>52</sup> MFS at 12.



this area to install and inspect other cages, but that fact does not make the space common building access space. Simply stated, an EIS customer will effectively require a minimum of 30 square feet for cage access in addition to the 100 square feet for the cage area itself. As a result, Pacific Bell will forego use of at least 130 square feet of central office space for each 10 foot by 10 foot cage area that it otherwise could use to serve other demands for service. Accordingly, the assignment of this space to the EIS customer and the recovery of the associated cost from that customer is economically efficient and consistent with the Commission's rate setting principles and statutory goals.

MFS also contends that "Pacific's costing scheme is easily manipulated" because Pacific Bell can "control" the size of the access area.<sup>53</sup> Pacific Bell acknowledged in its Direct Case that the actual size of the cage access area would vary by central office (Direct Case, App. O, at 0.1, Diagram A). The 30 square foot area, however, represents the minimum that will be required in front of each cage, in order to accommodate the arc of the cage door as it swings open. In fact, the average size of the cage access area for all collocation offices will likely be greater than 30 square feet. Pacific Bell, nonetheless, selected the minimum of 30 square feet so that it would not be accused of "manipulation."

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<sup>53</sup> MFS at 13.

That fact obviously did not deter MFS, which has, nonetheless, inexplicably and erroneously raised the claim.<sup>54</sup>

Although Sprint acknowledges the propriety of allocation of common space in the central office (approving of Pacific Bell's use of a gross-to-assignable space ratio), it improperly characterizes the 30 square foot area assigned for access as space "inflation."<sup>55</sup> Like MFS, Sprint fails to recognize that the access area in front of a collocation cage is assignable square footage. Because each such area is required to obtain access to a particular cage space, Pacific Bell is precluded from assigning that space to its own or any other use. Accordingly, the cost of this additional assigned space is caused by demand from, and properly should be recovered from, the EIS customer who utilizes the space. Any other assignment would, other things being equal, produce economically inefficient floor space rates.<sup>56</sup>

Finally, MCI purports in its Exhibit 2 to display a comparison of LEC rates for "functionally comparable cost elements," claiming that "[t]he rates, for elements that are relatively similar across LECs, are astoundingly different" and that "[i]t seems doubtful that the underlying costs have

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<sup>54</sup> Even MFS concedes that the size of the access area could be more than 30 square feet. MFS at 13.

<sup>55</sup> Sprint App A, at 13.

<sup>56</sup> It is worth noting that no party objected in the tariff review phase of this proceeding to Pacific Bell's recovery of the cost of the cage access area and only two parties have challenged it in this investigation.

generated these level [sic] of extremes."<sup>57</sup> MCI's Exhibit and accompanying narrative are blatantly deceptive. The Common Carrier Bureau recognized in its Designation Order that comparing EIS costs and rates across exchange carriers is a difficult task because carriers have bundled different combinations of functions in similar rate elements.<sup>58</sup> Part of the purpose of this investigation is to develop, through the TRPs, useful comparisons of the costs and charges for equivalent functions among the carriers. Despite the availability of the TRP information, MCI chose to compare rates from the original tariff transmittals and characterize them as functionally comparable.

Had MCI attempted to prepare an informative, instead of misleading, comparison it would have shown that Pacific Bell's illustrative floor space rate is \$6.97. The \$8.15 shown for Pacific Bell in MCI's Exhibit 2 is the proposed rate for EIS provided in LSAN01-03. The \$6.97 charge is the illustrative TRP rate per square foot for EIS provided in LSAN01-03 (Direct Case, App. F., at F.5). Pacific Bell's lowest illustrative rates are below \$6.00. Moreover, those rates are stated in terms of 100 square feet. When it is recognized that Pacific Bell actually provides 130 square feet per 10 foot by 10 foot cage area, the "effective" rate per square foot approaches \$4.50. Thus, MCI's Exhibit 2 is

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<sup>57</sup> MCI at 7-8.

<sup>58</sup> See Designation Order at III(A)(a)(15).

entirely irrelevant and misleading. As such, it should be rejected.

#### 8. Power Charges

TCG erroneously criticizes the exchange carriers' DC power charges, alleging that "LEC rates for DC power vary between \$199 and \$424 for 40 amps, but investment varies from \$6,343 to \$258,915."<sup>59</sup> Despite citing variances, which in and of themselves are no indicator that any single company's rate is inappropriate, TCG makes no attempt to refute the reasonableness of the cost components of any LEC.

As Pacific Bell explained fully in its Direct Case (at 15), DC power costs for EIS have been calculated on the assumption that all components of the power plant are used at full capacity. Normally such costs would be calculated on the basis of average power plant capacity actually used and would produce a higher power charge. TCG simply ignores the assumption Pacific Bell has used to produce a lower charge that is favorable to TCG.

MCI, in Exhibit 2, presents a misleading comparison of exchange carrier DC power rates. As with floor space, MCI once again distorts the comparison by: a) comparing proposed rates, which are not functionally aligned, instead of illustrative rates from the TRPs; and b) stating power rates

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<sup>59</sup> TCG at A-6. Pacific Bell was unable to replicate TCG's computation for Bell Atlantic's alleged \$258,915 power investment. It appears to be grossly overstated.

as a function of DS1 quantities, when they should be stated "per amp."<sup>60</sup> Again, MCI's Exhibit 2 proves nothing.

9. Cross-Connection Charges and Termination Equipment Charges

The Designation Order directed exchange carriers to identify the percentage of cross-connected circuits that are assumed to require repeaters and to explain the need for this equipment.<sup>61</sup> As stated in its Direct Case (at 44), Pacific Bell did not include repeaters in the provisioning of cross-connection service. If experience shows that repeaters will be needed in certain central offices, Pacific Bell will recalculate the cross-connection charges and refile tariffs as appropriate.

Repeaters can be a necessary component of service required for maintenance of desired transmission quality standard. Sprint agrees that "repeaters may be necessary where the distance from the collocation area to Pacific Bell's special access network elements exceeds 655 feet for DS1 and 450 feet for DS3."<sup>62</sup> Sprint, however, appears to contend that repeaters are only necessary for circuits of several hundred feet and erroneously asserts that Pacific Bell shares this

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<sup>60</sup> Amps are the common measure of DC power and the amount of amperage to support a DS1 is highly dependent on equipment used and the capacity and utilization rate of the equipment.

<sup>61</sup> See Designation Order at III(A)(h)(1).

<sup>62</sup> Sprint App. A, at 14; See also ALTS at 27.

view.<sup>63</sup> Pacific Bell explicitly noted in its Direct Case (at 44) that repeaters may be required "if DSX panels are installed between the collocation area and the special access elements and this distance exceeds 90 feet."

TCG erroneously alleges that there should be "no legitimate need for repeaters under proper provisioning practices."<sup>64</sup> In central offices where digital cross-connect system ("DCS") ports are scarce and demand is uncertain, adding repeaters may be less expensive than utilizing DCS resources.

TCG also generally objects to the inclusion of the costs of a point of termination ("POT") bay in the charges for EIS. TCG misleadingly alleges that "the POT bay is an unnecessary obstacle that adds to costs of interconnection, serves no necessary engineering function, and is nothing more than a latter-day 'protective coupling arrangement.'" TCG further contends that "the POT Bay does nothing but introduce an additional point of failure in the network . . . ."<sup>65</sup> After criticizing the inclusion of a POT bay as part of basic EIS, however, TCG does not propose the elimination of this equipment, or any other equipment for that matter. Rather, it simply recommends that the point of termination be moved

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<sup>63</sup> Sprint App. A, at 14-15.

<sup>64</sup> TCG at A-2.

<sup>65</sup> TCG at A-2 and A-3.

inside the interconnector's cage, and thus presumably transferring ownership and control to the interconnector.<sup>66</sup>

The single point of termination proposed by TCG is unacceptable because it does not comply with the technical specification established for a POT and raises unacceptable security and liability issues. Bellcore's Technical Reference ("TR") (TR-INS-000342) defines the POT as "the physical point where the access service terminates and the customer's facilities begins, and the division of responsibility occurs." The TR also states that both the LEC's and the customer's signal delivered to the POT must meet the appropriate signal parameter requirements. Pacific Bell designed its POT arrangement to conform to this TR. Under Ameritech's approach, however, which TCG supports, the interconnector-provided POT bay or equivalent is not an equal level point for setting signal parameters. In other words, it does not conform to the technical standards for a POT.

TCG contends that a POT bay cannot be used as a test point.<sup>67</sup> That assertion is demonstrably false. Pacific Bell's selected POT bay can serve as a test point provided that the exchange carrier and the interconnector equalize signaling to it. Pacific Bell will equalize to the POT bay because that represents the point where its access facilities terminate and the interconnector's facilities begin. That is

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<sup>66</sup> Figures 1 and 2 submitted with Ameritech's Transmittal No. 730 show clearly that the alleged "additional point of failure" simply moves inside the cage.

<sup>67</sup> TCG at A-3.

also where the division of responsibility occurs. If an interconnector provides its own POT bay or equivalent, the exchange carrier's facilities and responsibilities will extend into the interconnector's cage.<sup>68</sup> Since, in the Ameritech situation, the equal level point is now the exchange carrier's DSX panel located in its facility equipment area of the central office, and the cable to the interconnector's POT is owned and maintained by the exchange carrier, routine testing may require exchange carrier personnel to enter the interconnector's cage to isolate trouble. In addition, testing the circuit at the interconnector's POT would require the assistance of the interconnector, which would have to adjust the levels from its equipment.

In Pacific Bell's view, installation of the POT within an interconnector's cage is undesirable. An internal installation would make it more costly to maintain the EIS cross-connect. It would also increase an exchange carrier's potential liability because its personnel would need to work within the cage in proximity to the interconnector's equipment and to perform testing from a customer's equipment rather than from its own equipment.<sup>69</sup> This arrangement also requires more

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<sup>68</sup> In view of TCG's vigorous opposition to routine inspections of its central office space (see infra discussion at Section O), it is ironic that TCG apparently has no qualms about allowing an exchange carrier to enter its space for circuit testing purposes.

<sup>69</sup> Pacific Bell limits access to the common collocation area and to the interconnector's cage for security reasons and to minimize liability issues. Only those Pacific Bell personnel who have a need to access the collocation common (continued...)



coordination between carrier and customer and makes trouble isolation more difficult and costly. For example, unless it can be conclusively established to an interconnector's satisfaction that trouble is caused by the interconnector-provided POT, or the LEC's interconnecting cable, the interconnector will want to test Pacific Bell's DSX as a possible source of trouble. That would require a Pacific Bell escort and observer, the labor cost of which would have to be borne by the interconnector. Pacific Bell, however, would still bear the cost of disruption to its work force schedule resulting from such requests.

Pacific Bell's approach to the POT is the most workable, reasonable and efficient for both Pacific Bell and the interconnector. Pacific Bell's POT conforms to Bellcore TR standards and is easily accessible in the collocation common area to both its own technicians as well as the interconnector's personnel. Placement of the POT in the collocation common area also eliminates the need for security measures such as escorts and the potential liability associated with working inside the interconnector's cage and around its equipment. Most importantly, Pacific Bell can test the EIS circuit and the interconnector can test their circuit at the POT, which will be an equal level point, and properly

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<sup>69</sup>(...continued)

area either for testing at the POT or for inspections will have access. Access to the interconnector's space is further limited to a minimal number of personnel, viz. those who provide building-wide access during emergency situations and those who conduct inspections.

isolate the trouble source quickly. Having proper signal levels and a clear demarcation point for both networks will eliminate costly issues of trouble responsibility that can arise under TCG's approach.

Finally, TCG claims that "Pacific Bell's cost support shows that over \$5.00 of their DS1 cross-connect charges each month are related to the POT Bay."<sup>70</sup> This is simply not true. The actual charges that the POT bay adds to the DS1 cross-connect amounts to a mere 71¢. (Direct Case, App. L, at 9).

As the foregoing shows, TCG's inflammatory claim that Pacific Bell is using the POT bay as a means "of artificially increasing their competitor's costs" is utterly specious.<sup>71</sup> Pacific Bell demonstrated in its Direct Case that the POT bay is an integral and necessary part of the efficient provision of EIS. Further, TCG's own proposed configuration substantiates that conclusion. TCG, however, would prefer to own and install the POT inside its cage, a configuration which would increase costs and produce inefficiency. Pacific Bell has shown above that its configuration is superior to that proposed by TCG and clearly reasonable.

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<sup>70</sup> TCG at A-1.

<sup>71</sup> TCG at A-1.

#### 10. Security Installation Function

Sprint requests information supporting the installation of a "high-cost" security system.<sup>72</sup> As Pacific Bell stated in its documentation that accompanied Transmittal No. 1613 and in its Direct Case (at 18), the non-recurring charge for security installation is based on the costs of additions to its existing security systems required to provide interconnectors with unescorted access to their space at all times (24 hours per day, seven days per week). Pacific Bell selected its access card reader security system in response to network liability concerns long before the FCC ordered physical collocation. It is entirely unreasonable for interconnectors to expect Pacific Bell to abandon or degrade necessary security measures that were installed even prior to the requirement to allow access to its central office by parties over which it has no right of denial.

Additionally, Sprint's assertion that these rates are unreasonably high is based on its erroneous assumption that there will be four collocators per central office. Pacific Bell does not assume demand greater than one for its non-recurring infrastructure construction charge. Instead, as discussed below, Pacific Bell relies on its proration mechanism to levelize the non-recurring charges if higher demand is experienced.

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<sup>72</sup> Sprint App. A, at 3-4.

B. Pacific Bell's Rate Structure For EIS Is Reasonable

1. Central Office Construction Charges

Although no party challenged Pacific Bell's non-recurring charges for central office infrastructure construction, MFS and ALTS oppose Pacific Bell's plan for prorating the non-recurring costs of such construction in cases where additional customers request service in a central office within 12 months after the initial order is received. MFS claims that this approach ". . . unreasonably inflates the cost of collocation for the first party seeking collocation. . . ." <sup>73</sup> ALTS alleges that it "will have a clear deterrent effect on the initiation of competition . . ." <sup>74</sup>

As explained in its Direct Case (at 53-54), Pacific Bell's approach to the recovery of these costs both assures that such costs will be recovered from the cost-causative customers and also reasonably apportions the costs among EIS customers. If only one interconnector requests EIS in a particular central office, it is fair, reasonable and consistent with Commission policy to recover common construction costs entirely from that customer. If more than one customer requests service, the proration approach refunds a portion of the non-recurring charge to the prior interconnectors. Pacific Bell developed this approach precisely because no reliable forecast of collocater demand has been or can be formulated, a fact which neither party disputes.

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<sup>73</sup> MFS at 19-20.

<sup>74</sup> ALTS at 31.

Pacific Bell's experience to date substantiates its conclusion that the demand for collocation is highly dynamic and cannot be projected with any degree of accuracy.<sup>75</sup>

ALTS furnishes no empirical evidence to substantiate its assertion that Pacific Bell's proration plan will inefficiently deter customer demand. Further, Pacific Bell's limited experience to date refutes that contention. Specifically, Pacific Bell has already received orders for EIS which allows interconnectors to access 26% of Pacific Bell's interstate DS1 special access lines, and expects numerous other orders in the near future, based on ongoing customer interactions.

Neither MFS nor ALTS addresses the issue of risk to Pacific Bell, its ratepayers and shareholders. Further, neither party proposes an alternative recovery mechanism that would reasonably protect both Pacific Bell against the risk of non-recovery of these non-recurring costs in the event that a demand estimate of collocation proves to be overstated, and collocation customers against the risk of incurring rates that over-recover cost if a demand estimate proves to be understated. In the absence of a reliable forecast, the proration mechanism is the only recovery plan which removes from

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<sup>75</sup> For example, normal forecasting criteria would have projected that the downtown Los Angeles central office would be one of the first to be ordered for collocation, and that multiple orders would likely be received. This forecast would be based on size of market served by this wire center and the presence of existing network facilities of multiple potential interconnectors in the immediate vicinity. Pacific Bell has received only one order for this central office.

Pacific Bell sizeable financial risk and protects collocation customers by allowing equitable sharing of common costs among interconnectors within a central office.<sup>76</sup>

MFS further recommends that the FCC eliminate Pacific Bell's 12 month restriction on proration on the grounds that the plan results in a "windfall" for Pacific Bell and the timing of installing subsequent collocators can be manipulated to avoid proration. In fact, the proration plan only permits Pacific Bell to recover its common central office construction costs. Whether there is one EIS customer or more than one in a central office, Pacific Bell will receive no more than the costs incurred in preparing the office for collocation. Thus, Pacific Bell could gain nothing from such "manipulation." Moreover, MFS's suggestion that the plan can be manipulated is based on the erroneous assumption that all subsequent EIS customers must have their service installed within 12 months in order to be subject to the proration plan.

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<sup>76</sup> MFS and Sprint argue that since Pacific Bell used an estimated demand of four collocators per central office to develop its recurring charges, it should use the same estimate for its non-recurring charges for central office construction. MFS at 20, n.34; Sprint App. A at 3. This argument ignores the basic differences in the risk of non-recovery of EIS costs between non-recurring and recurring charges. If a non-recurring charge designed to recover fixed costs is based on an inaccurately high demand forecast, Pacific Bell will never recover the underlying fixed costs. By contrast, if Pacific Bell's generous forecast of demand on which its recurring charges are based proves to be inaccurate, it can file to modify its rates at some point in the future. The only amount it will have foregone is the apportioned amount of recurring charge not collected during the initial period. Further, MFS's unsubstantiated allegation that Pacific Bell based its non-recurring charge for power on a demand estimate is simply wrong.

In fact, Pacific Bell's proration plan is not triggered by the date the EIS space is available for occupancy, but rather by the date that a service order is submitted (i.e., within 12 months of the initial order). The timing of the placement of service orders is completely within the control of the customer, not Pacific Bell. Thus, Pacific Bell has neither the incentive nor the ability to manipulate the proration plan.

## 2. Payment of Non-Recurring Charges

Sprint opposes Pacific Bell's requirement that non-recurring charges associated with common and customer-specific construction costs must be paid at the time the service order is placed.<sup>77</sup> Sprint contends that customers should pay 50% of the charge at the start of construction and 50% at completion, arguing that its approach is consistent with commercial construction practices. Although a staggered payment schedule may be appropriate, as Pacific Bell pointed out in its Direct Case (at 55-56), in cases where there is some doubt as to the capability of the contractor to perform the necessary construction, the FCC's rules for EIS require Pacific Bell to construct the facilities necessary to provide EIS. Thus, customers do not need to withhold part of their payment to assure that the work will be completed. Pacific Bell's requirement properly places the cost of financing EIS construction on the EIS customer, and properly removes any

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<sup>77</sup> Sprint App. A at 16.

risk of non-recovery due to default and cancellations from Pacific Bell's ratepayers and shareholders.<sup>78</sup> Sprint's analogy to the payment requirements applicable to other special access services is unavailing. Sprint fails to recognize the vast difference in the magnitude of risk for non-recovery of costs presented by EIS non-recurring charges versus other special access non-recurring charges.

### 3. Extraordinary Charges

MFS does not specifically challenge Pacific Bell's provision governing the assessment of extraordinary charges. Nevertheless, it urges the Commission to require the removal of such provisions from all exchange carrier tariffs. Pacific Bell's provision permits it to recover extraordinary charges from an EIS customer only for those costs which it incurs solely because of an interconnector's occupancy. Since the interconnector is the direct cause of such costs, it is economically efficient and consistent with Commission rate setting principles to assess the cost to them, rather than requiring customers of other services to pay for such costs.

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<sup>78</sup> Sprint even suggests that it would withhold payment if it were not satisfied with the construction work. (App. A, at 16.) If Sprint concluded that the EIS facilities furnished by Pacific Bell did not comply with the tariff requirements, its remedy is to file a complaint with the FCC.



C. Pacific Bell's Provisions Governing the Size, Expansion and Location of Interconnection Space Are Reasonable

1. Initial and Expansion Space Requirements

ALTS broadly complains that exchange carriers "have not justified the inflexible approach taken to the increments of space that can be ordered" without specifying either the increments that it wants or the basis for its complaint.<sup>79</sup> This is only one of many examples of ALTS's tactic of condemning a tariff provision, and furnishing no basis for its objection.

Almost all other parties generally accept as reasonable the 100 square foot minimum space required by Pacific Bell and others for an EIS customer's cage. TCG contends, however, that the 100 square foot minimum should not be required if only a lesser amount of space is available for physical collocation.<sup>80</sup> Based on its survey of more than 53 central offices for physical collocation, Pacific Bell did not find any instances where an area smaller than 100 square feet would satisfy security and safety requirements (such as secured access and proper aisle spacing). Moreover, if the minimum required space were not available in a central office, Pacific Bell would evaluate its ability to provide virtual collocation consistent with the Commission's Expanded Interconnection Order.

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<sup>79</sup> ALTS at 34.

<sup>80</sup> TCG at B-1-2.